



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

JOHN BEN SHEPPERD
ATTORNEY GENERAL

June 28, 1954

Hon. Robert S. Calvert
Comptroller of Public Accounts
Capitol Station
Austin, Texas

Opinion No. S-131

Re: Applicability of the stock transfer tax, Article 7047m, V.C.S., to the surrender of preferred stock for the issuance of common stock to the same person in accordance with conversion privileges, the exchange affecting neither the capital nor surplus of the corporation.

Dear Mr. Calvert:

Your request for an opinion from this office is, in substance, as follows:

Does the stock transfer tax, Article 7047m, V.C.S., accrue on the surrender of preferred stock for an issuance of common stock in accordance with the conversion privilege of the corporate charter? The same person who surrendered the preferred stock received the common stock and neither the capital nor the surplus of the corporation is increased. There are two prior Attorney General's Opinions, Nos. 0-3792 and 0-4339, which touch on this question.

Section 1 of Article 7047m, Vernon's Civil Statutes, embodies the tax and specifies the transactions on which the liability accrues. This section is too lengthy to set out. The legal issue is whether the language taxing "transfers of shares" is applicable to this type of transaction.

This office is of the opinion that the tax does not accrue under the fact situation set out in your letter of inquiry.

We have been unable to locate a Texas decision directly in point; however, we have had available the federal cases and rulings by the Internal Revenue Service. We quote a ruling from a Bureau letter dated July 25, 1941, to which the Internal Revenue Service still adheres, as follows:

"Where stockholders owning convertible preferred stock exercise the conversion privilege, there is no stock

transfer tax on the preferred stock turned in and no tax liability on the issue of the common stock, if the capital of the corporation is not thereby increased." (See 413 CCH, Para. 6466.)

This office is of the opinion that had the common stock been issued to some person other than the one who surrendered the preferred stock that a tax liability under Article 7047m, V.C.S. would accrue.

This opinion overrules prior Attorney General's Opinion No. 0-3792, insofar as that opinion is in conflict herewith.

SUMMARY

No tax liability accrues under the stock transfer tax, Article 7047m, V.C.S., when preferred stock is surrendered for the issuance of common stock to the same person in accordance with conversion privileges when such an exchange does not affect the capital or surplus of the corporation. Attorney General's Opinion No. 0-3792 is overruled insofar as it is in conflict herewith.

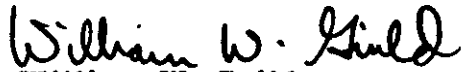
APPROVED:

Yours very truly,

W. V. Geppert
Taxation Division

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